

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the Cable)	MB Docket No. 05-311
Communications Policy Act of 1984 as Amended)	
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	

**REPLY COMMENTS OF METROPOLITAN AREA COMMUNICATIONS
COMMISSION**

Metropolitan Area Communications Commission ("MACC") welcomes the opportunity to file these Reply Comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket.

WHO WE ARE

Located in Beaverton, Oregon, MACC is composed of 15 local government jurisdictions with a mission to serve the public interest through developing, overseeing, evaluating and promoting an area-wide cable communication system, and acting as a forum on communication issues and alternatives. MACC's area population exceeds 684,000 citizens with 123,000 cable subscribers. MACC administers three cable franchises facilitating regional telecommunications. We strongly oppose the tentative conclusion in the FNPRM that the value of cable franchise obligations, such as those that allow our programming to be viewed on the cable system, can be deducted from franchise fees.

POTENTIAL IMPACT

MACC estimates the proposed rule will reduce MACC's franchise fees by as much as 30%. As the majority of MACC's budget is fixed, such a reduction in fees would result in cuts

to personnel and programing. This reduction will drastically impact the type and quality of programs MACC offers. For example, in order to adjust to the reduced fees, MACC will be faced with the choice of either not offering or reducing the following services to residents within its jurisdiction:

- MACC provides five PEG channels, which prompt public engagement and education. MACC produces an average of 32 governmental meetings per month, for a total of more than 400 government meetings per year. In addition, MACC produces over 200 personalized government, outreach, contract and regional programs each year resulting in over 600 total productions for MACC jurisdictions. MACC also produces remote live productions that air simultaneously on our cable channels and through social media (Facebook Live). This gives our residents multiple platforms to view events when they are not able to attend in person;
- MACC provides extensive election coverage including local candidate voter forums and a weeklong Video Voters' Guide hosted in our studio. This past election cycle, MACC had 50 candidates from 26 different races (local, state and federal) participate;
- MACC also produces public safety videos covering topics such as earthquake preparedness, Community Emergency Response Training (CERT), emergency management services, law enforcement training, and informational videos;
- MACC enforces service standards, for example ensuring that offices and telephones are staffed adequately to serve subscribers, appointments are kept, outages are fixed within 24 hours, and television signals are strong. MACC monitors these and other standards to ensure subscribers get what they pay for. As part of this objective, in 2017 MACC discovered one of its cable providers was continuing to charge customers to the end of

their billing cycle after they cancelled service, in violation of the franchise agreement. While this complaint was submitted by one customer, working on behalf of all the customers, MACC had the cable provider review their entire customer disconnects and credit former customers where they were incorrectly billed;

- MACC provides service support. MACC receives quarterly reports from the cable providers that show how quickly they are answering calls and performing service. If a cable operator falls below levels set by the franchise, MACC can enforce the franchise on the customer's behalf. If the violation continues, MACC will issue fines to cable providers.
- MACC conducts franchise fee audits and reviews on behalf of its member jurisdictions. Over the years, this effort has recovered approximately \$675,000 in underpaid franchise fees, including a recent audit which recovered approximately \$35,000 in underpayments. Perhaps more importantly, this effort has resulted in cable providers more accurately reporting and paying franchise fees.

No other entity provides these programs to our residents. If the Commission implements the currently proposed rule, the following direct and tangible results would occur:

- Seniors and other residents without the ability to travel will have *less access to, and less ability to participate in government meetings, programs and initiatives*;
- All residents will have *less access to important emergency preparedness training*;
- All local voters will have *less information on local, state and federal candidates for office and issues on the ballot*;
- All residents will have *fewer consumer protections and less ability to collectively protect their rights* under the franchise agreements.

It is important to note that residents will see no “upside” from the proposed rule. Instead, residents only stand to suffer from the changes proposed as the services MACC offers will be reduced or discontinued.

We invite the Commission to view for themselves the important benefits provided by PEG programming. Because this matter is so important to our residents, MACC-area elected officials and agency leaders have weighed in on the importance of PEG and what it means to our area. Please hear what they have to say in this video: <https://youtu.be/RzKrmHCURUs>.

MACC REPLY COMMENT

The Commission, in the FNPRM, suggests that PEG access channels and other in-kind contributions such as complementary cable service in schools and other government buildings and customer service obligations are for the benefit of the local franchise agency (“LFA”) rather than for the public. Nothing could be further from the truth.

Without explaining its reasoning, the Commission tentatively concludes that non-capital PEG requirements and resident services should be considered franchise fees because they are, in essence, taxes imposed for the benefit of the LFA. However, the FNPRM then tentatively concludes that build-out requirements are not franchise fees because they are “not specifically for the use or benefit of the LFA,” but instead directly benefit the public¹. MACC agrees with this conclusion, but also asserts that it is illogical to exclude build-out requirements but not non-capital PEG contributions, cable access in schools and libraries, and customer service requirements. As explained above, it is the 684,000 citizens with 123,000 cable subscribers who benefit from MACC’s extensive PEG programming and customer services benefits, not the LFA or the local governments. For example, MACC does not benefit from customers receiving better

¹ FNPRM para 21

service from their cable providers; from voters being better informed; or from seniors having more access to government meetings. Similar to the Commission's reasoning regarding build-out requirements, these contributions fit squarely into the category of benefits that do not accrue to the LFA.

Similar to the concerns expressed by the Quad Cities Cable Communication Commission's (Q4C) Comment, MACC is also concerned that the proposed rule will effectively re-write cable franchises and undercut decades of mutual understanding between LFAs and cable providers. MACC's franchise agreements also include language requiring cable providers to support PEG programming and other non-capital in-kind contributions and that such obligations are in addition to franchise fees. And similar to Q4C, this arrangement and mutual understanding is fundamental to how the parties drafted their franchises and organized their financial relationship.

This unanticipated departure from current understanding and practice may require LFAs in MACC's position to renegotiate current franchise agreements to reduce these public benefits—if they can. Because the Commission's tentative conclusions are such a significant interpretive departure from how these exact statutory terms have been understood and applied for decades, many LFAs do not have a clear path to end receiving these contributions now that the Commission may require cable operators to monetize and deduct the "fair market value." These LFAs may be left with no other option but to keep receiving the service or risk violating the franchise agreement. In essence, LFAs have become captive customers for cable operators for the term of the franchise agreement.


This is not what Congress intended. Particularly for PEG services, the clear terms of the Cable Act demonstrate Congress drafted the legislation to encourage the provision of PEG

channels for the benefit of the public, not to provide an additional revenue stream for cable operators. As part of the Act's primary purpose, Congress provided that the Act is designed to be "responsive to the needs and interests of the local community."² Further, in awarding a franchise, Congress provided that the LFAs "may require adequate assurances that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support."³ In these plain terms, Congress encouraged LFAs to require cable operators to provide adequate support for PEG channels. Congress's manifested intent is that cable operators would contribute to the effort to provide PEG access channels.

The Commission's proposed rule turns this relationship on its head. If LFAs now have to essentially pay cable operators fair market value for their PEG support and other in-kind contributions, the LFAs become the cable operator's customers, contributing to the cable operator's profits. The LFAs, in the provision of their PEG services, are now providing financial support to the cable operators. This absurd situation discourages the provision of PEG resources, and is far from promoting a franchising system that is "responsive to the needs and interests of the local community," as Congress clearly intended by putting such a statement in the Act's defining "Purpose."

MACC strongly opposes the proposed rules in the FNPRM. The proposed rule has little, if any, public benefit and clearly does not conform to the text or the intent of the Cable Act.

Respectfully submitted,



Thaddeus Girard, MACC Administrator

² 47 U.S.C. § 521(2)

³ 47 U.S.C. § 541(4)(B)